BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules	)	CC Docket No. 93-292
Concerning Toll Fraud	)	

REPLY OF SOUTHWESTERN BELL CORPORATION

SOUTHWESTERN BELL CORPORATION

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Table of Contents

SUMMARY*

SBC and its affiliates oppose all "loss sharing" proposals not based on common law principles of causation. Liability without fault has been recognized by certain jurisdictions in certain circumstances, but not liability without causation. Nothing in the record supports such a drastic departure from accepted principles of fairness and accountability.

SBC also opposes any attempt to invalidate any limitation of liability provisions contained in SWBT's state and federal tariffs. The Commission lacks the authority to invalidate provisions of state tariffs. And the record does not support any such invalidation of SWBT's federal tariff. Indeed, there is nothing in the record to indicate the amount of increase in SWBT's rates which would be necessary to offset the loss of limitation of liability, nor does the record suggest how such an increase in costs should be calculated.

Experience with the Florida PUC's "loss sharing" rules demonstrates that the rate of fraud has not decreased at all, only the number of complaints received from private payphone providers. This is to be expected, since the Florida rules allow such providers to shift the burden for toll fraud to other parties without having to take any action at all to avoid the loss in the first place.

Those parties claiming that SWBT has no incentive to provide timely and correct information from its LIDB are either

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* All abbreviations used herein are referenced within the text.

mistaken, or disingenuous, or perhaps both. SWBT is the second largest user of its LIDB. What profit would SWBT gain by providing less than accurate information?

The various notice proposals contained in the NPRM will have little effect on toll fraud. Only a strong economic incentive will cause people to change their behavior. If the notice proposals are adopted in concert with some sort of "loss sharing" mechanism, then no party in a position to stop toll fraud will have any incentive to do so. The problem will thus be exacerbated.

With respect to cellular fraud, the current status of liability apportionment, including contractual arrangements among carriers, is appropriate and already reflects not only rational business decision-making but also concepts of control and causation. Commission action in this area is not likely to be a productive use of time and resources.

SBC believes that liability for toll fraud should be borne solely by those parties in the chain of causation which led to the fraud. Those are the only parties who can stop the fraud. "Loss sharing" will only increase the cost of toll fraud and will do nothing to stop it.

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The Comments filed in this Docket fall into two general categories. On the one hand, Local Exchange Carriers (LECs) argue that toll fraud loss should be borne by the individual(s) with control of the instrument(s) or network(s) through which fraud is perpetrated. This is to be expected, since the majority of toll fraud occurs on networks not controlled by LECs. On the other hand, virtually every other party filing comments--primarily CPE/PBX owners and private payphone owners--argue that toll fraud loss should be "shared" by all telecommunications providers. This also is to be expected, since most toll fraud involves CPE/PBX users and private payphone owners.

Southwestern Bell Corporation (SBC), on behalf of its subsidiaries Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Mobile Systems (SBMS), opposes any and all "loss sharing" mechanisms not based on principles of legal causation. Although Anglo-American jurisprudence does recognize, in certain limited instances, the concept of liability without fault, the concept of liability without legal causation has never been adopted by any court or legislative body.

SBC also opposes any and all attempts to interdict the limitation of liability provisions contained in SWBT's various tariffs. Such provisions have been specifically approved by both federal and state courts and cannot be abolished or modified without a correspondingly large increase in rates and charges to account for increased liability. Moreover, the Commission lacks the jurisdiction to require changes to SWBT's state tariffs.

Because only a strong economic incentive will cause people to change their behavior, the various notice proposals contained in the Comments will be ineffective. Indeed, if the notice proposals are combined with "loss sharing" mechanisms which remove a party's incentive to stop the conduct which is allowing toll fraud to occur, the problem will be exacerbated rather than ameliorated.

I. NOTICE

The NPRM concludes that much of the toll fraud problem can be solved if LECs will give appropriate notices to their customers.

> ". . .[W]e tentatively conclude that tariff liability provisions that fail to recognize an obligation by the carrier to warn customers of risks of using carrier services are unreasonable. Moreover, we tentatively conclude that carriers have an affirmative duty to ensure that these warnings are communicated effectively to customers through for example, billing inserts, annual notices, or other information distribution methods."[1]

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[1] In the Matter of Policies and Rules Concerning Toll Fraud, Notice of Proposed Rulemaking, CC Docket No. 93-292, released December 2, 1993 (NPRM), ¶24.

Such notice, presumably, would be included in SWBT's federal access tariff, since that is the only SWBT tariff over which the Commission has any jurisdiction.[2] The "customers" purchasing service from SWBT's access tariff, however, are by and large Interexchange Carriers (IXCs) such as AT&T and MCI. Does the Commission truly believe that AT&T needs to be reminded that a thief, if given the opportunity, will steal?

Several parties share this belief:

> "When customers initiate service, carriers should provide written warnings as to possible risks of using the services. Large new customers, e.g., with anticipated carrier billings in excess of $50,000 annually, should be required to make an affirmative written statement that they understand the risks."[3]

> "To ensure that customers receive adequate warnings, the Commission could implement rules requiring carriers and PBX vendors to provide copies of the Commission's most recent toll fraud Consumer Alert at no cost to customers requesting it or to take other steps to notify end-users."[4]

The notion that life's travails can be exorcised by the giving of notice is firmly rooted in late twentieth century American thought and approaches belief in the efficacy of incantations. Thus, all available square inches of the housings of new lawn mowers are now covered with labels such as **DANGER!**, **WARNING!**, **HAZARD!**, and the like. And the finer print warns

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[2] 47 U.S.C. §152(b).

[3] Comments of International Communications Association, p. 11.

[4] Comments of WilTel, p. 8.

prospective users that placing one's limbs in the path of the whirring blade may cause injury or death.

The implicit assumption behind notice requirements is that people are not smart enough to take care of themselves and are therefore in need of guidance. What the notice proponents fail to comprehend is that people, by and large, are very self-interested and will not change their behavior unless something gives them the incentive (monetary or otherwise) to do so.

Parties suffering toll fraud, for example, have at least two options. They can take steps to avoid the loss, or they can look for someone else to pay it. The latter tactic is displayed in this docket. If PBX users can find someone else to shoulder the toll fraud burden, they will then have little reason to change the behavior which is causing the problem. If the Commission wishes seriously to attack toll fraud, it must begin by recognizing that the giving of notice will change no one's behavior.

II. LIMITATION OF LIABILITY PROVISIONS

Several Comments suggest that the Commission should nullify all limitation of liability provisions contained in LEC tariffs:

> "The FPTA [Florida Pay Telephone Association] believes that the FCC's adoption of the Florida fraud rule would, as a matter of law, supersede any carrier tariff language to the contrary. However, for clarity and uniformity all carriers should be required to specifically cross-reference the rule as an

> exception to any tariff limitations of liability."[5]

If these Comments are requesting the Commission to invalidate limitation of liability provisions in SWBT's state tariffs, all of which have received judicial approval,[6] the Commission lacks the authority. Section 2(b) of the Communications Act, 47 U.S.C. §152(b), states:

> " . . .[N]othing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . ."

In holding that this provision prohibits the FCC from invalidating specific state law regulating intrastate communications, even in cases in which state law has an effect on interstate communications as well, as in the case of state depreciation rules, the Supreme Court has stated:

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[5] Comments of Florida Pay Telephone Association, Inc., p. 8. See also Comments of the International Communications Association, p. 8: "The tariff provisions in question are artifacts of a former era and no longer reflect the complexities of a multi-vendor, multi-technology environment in which telecommunications and information services play increasingly vital economic roles." And see Comments of Planned Parenthood of New York City, and Reynolds and Reynolds, p. 5: "In short, the Joint Commenters [sic] support the Commission's proposal to impose an affirmative duty upon carriers to warn end users of the risks of toll fraud, but propose the further step that existing tariff liability-limiting provisions be declared unlawful."

[6] Southwestern Bell Telephone Company v. Wilkes, 269 Ark. 399, 601 S.W.2d 855 (1980); Burdick v. SWBT, 9 Kan. App. 2d 182, 675 P.2d 922 (1984); Warner et al. v. SWBT, 428 S.W.2d 596 (Mo. 1968); Wheeler Stuckey, Inc. v. SWBT, 279 F.Supp. 712 (W.D. Okla. 1967); Southwestern Bell Telephone Company et al. v. Vollmer et al., 805 S.W.2d 825 (Tex. Civ. App. 1991).

> " . . . [W]e simply cannot accept an argument that the FCC may nevertheless take action which it thinks will best effectuate a federal policy. An agency may not confer power upon itself. To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do."[7]

The NPRM in this docket suggests a more narrow, though still broad, scope to the issue:

> "We seek comment on whether these limitations of liability should be permitted to shield the LECs from responsibility for toll losses incurred when a joint use calling card is used to bill fraudulent calls or whether the Commission should establish a rule for allocating liability for toll losses. Commenters are also requested to comment on whether such liability should be described in the LECs' tariffs."[8]

It is unclear whether the NPRM is referring to all limitations of liability provisions in all SWBT tariffs, or rather the various limitation of liability provisions contained in SWBT's federal access tariff. Toll fraud involving calling cards, of course, can occur as part of a purely intrastate communication. In such a case, the Commission lacks authority over applicable state tariffs. In the case of calling card fraud involving an interstate communication, then SWBT's federal access tariff, which contains a variety of liability limiting provisions, must be examined, and a

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[7] Louisiana Public Service Commission v. Federal Communications Commission, et al., 476 U.S. 355. 374-75 (1986).

[8] NPRM, ¶39.

far more substantial record must be developed before the issue can even be considered.

The purpose of a limitation of liability provision is to allow rates to be both uniform to all customers and lower than if carriers were liable for errors.[9] The record in this Docket is bereft of any evidence whatever concerning the increase in federal access rates which would be necessary were the Commission to invalidate the various limitation of liability provisions in SWBT's federal access tariffs. Indeed, because the concept of limiting liability in return for lower uniform rates is so consistent in state and federal regulatory frameworks, the Commission has never even indicated an appropriate method for estimating increased costs due to the removal of a limitation of liability provision.

The problem is not ameliorated if the Commission's proposal is limited solely to SWBT's federal LIDB tariff, and its corresponding limitation of liability provision. Both the NPRM and Comments suggest that SWBT be held liable for toll fraud loss in all cases involving LIDB validation, even if the information in SWBT's LIDB is correct. MCI, for example, contends that "LECs have no incentive . . . to ensure the accuracy of LIDB as it [sic] receives the same payments for the valid and fraudulent calls;" therefore, "LECs should be made financially responsible for the IXC tariffed charges for fraudulent calls that are 'approved' by

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[9] Western Union Telegraph Co. v. Esteve Brothers & Co., 256 U.S. 566, 572 (1920).

LIDB."[10] SWBT, however, is the second largest user of its own LIDB. What profit does SWBT gain if its LIDB is inaccurate? Moreover, SWBT has taken several steps to improve its fraud management capabilities, such as distribution of customer education materials, installation of adjunct fraud management systems and availability of an 800 number 24 hours per day, seven days per week, for reporting lost/stolen cards or suspicions of fraudulent activity.[11]

In cases involving stolen calling cards, for example, SWBT's LIDB will be updated immediately upon receipt of information that a card has been stolen. Toll fraud loss will thus, absent extreme and unusual circumstances, always occur before SWBT receives the information. Except for cases in which SWBT's own negligence has led to a LIDB error, SWBT will never be responsible for toll fraud involving LIDB. If SWBT's LIDB rates are increased to provide for such liability without fault on SWBT's part, or if SWBT develops an entirely new, higher-priced, service to, in effect, guarantee that IXCs will receive the full retail value of all calling card, collect and third-number calls, even if

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[10] Comments of MCI, p. 14.

[11] Comptel's Comments, at page 7, allege that SWBT and other LECs have discriminated against small IXCs by means of Mutual Card Honoring Agreements (MCHAs) between LECs and AT&T. This is untrue. SWBT is ready and willing to enter into an MCHA with any and all IXCs and in fact has made such an offer to IXCs other than AT&T.

fraudulently placed, then IXCs such as MCI will end up paying SWBT for the retail value of such calls--a classic Mobius loop.[12]

Several parties suggest that, unless LIDB providers are willing to assume financial responsibility for fraudulent calls involving LIDB, IXCs should be allowed to charge for including calling and called number information in LIDB queries.[13] However, including calling and called number information in LIDB queries is no guarantee that fraud will not occur, because including such information in LIDB queries does not inform LIDB providers if the calling customer is authorized to use the billing information offered, nor whether the customer will pay.

Including calling and called number information improves fraud management of LIDB providers, which directly benefits IXCs and other LIDB users. This is why SWBT's LIDB tariff, by technical publication reference, requires inclusion of calling and called number information. Those IXCs who refuse to include such information in their LIDB queries are thus "cutting off their noses to spite their faces."

If LECs are required to pay IXCs for receipt of calling and called number information, LECs will simply pass the increased cost right back to the IXCs through higher LIDB rates--another Mobius loop. Thus, LIDB users without toll fraud loss will be

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[12] The direct costs identified by SWBT in gaining approval of its LIDB tariff did not include the revenue responsibility (full retail value of calls) which certain parties would have SWBT assume. Naturally, if SWBT were to assume such responsibility, the costs would be reflected in increased SWBT LIDB rates.

[13] Comments of MCI, p.14; Comments of TFS, p. 15.

required to subsidize those users experiencing loss, whether or not the users experiencing loss have taken any precaution to avoid fraud.

"But" the proponents of loss sharing respond, "SWBT will have no liability if the LIDB user is at fault." Such a proposal is untenable. SWBT's tariff cannot be amended to allow LIDB liability limitation in cases in which the LIDB user is at fault but not in cases in which the user is not at fault. This would entail a rate structure impossible to administer (how would potential costs be figured?) and would breed endless litigation. A proposal to eliminate the limitation of liability provision in SWBT's LIDB tariff, or in any other section of SWBT's federal access tariff, is nothing more than a proposal for one group of customers to subsidize another. There is, simply put, no justification whatever in the record of this Docket, or anywhere else, for such a subsidy.

III. CAUSATION

Toll fraud loss involves the common law issue of causation. All who would hold SWBT liable for toll fraud implicitly suggest that such liability may be imposed without causation. "Implicitly" is appropriate here, because no party other than SWBT even discusses the issue of causation. Yet without causation, there can be no liability.

The law recognizes two different types of causation: causation-in-fact, and proximate causation. Causation-in-fact simply means that, before a party can be held liable for a specific loss, that party's conduct must be part of a direct sequence of

events leading to the loss. The two tests applied to determine causation in fact are the "but for" and "substantial factor" tests. The "but for" test requires that, before liability may be imposed, it must be shown that the loss would not have happened "but for" the conduct of the defendant. The "substantial factor" test imposes liability only if the defendant's conduct was a "substantial factor" in the loss.[14]

Proximate cause goes one step beyond causation-in-fact. Even if an individual's conduct was the cause-in-fact of a loss, liability will not be imposed if it was not foreseeable that the conduct in question would produce the loss. The theory behind the doctrine of proximate causation is that the law must draw a line somewhere; otherwise, parties only remotely connected to a loss will have the same liability as parties closely connected. More than anything, proximate causation embodies the notion of simple fairness.[15]

Application of these principles to the various "loss sharing" proposals of this docket shows that SWBT would be responsible for toll fraud even though SWBT's conduct was neither the cause-in-fact nor the proximate cause of the loss. For example, the toll fraud regulations adopted by the Florida Public Service Commission would prohibit SWBT from collecting from a pay telephone provider for charges for collect or third number billed calls, if the pay telephone provider purchases Originating Line

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[14] See, e.g., Menne v. Celotex Corp., 861 F.2d 1453, 1459 (10th Cir. 1988).

[15] See, e.g., Urbach v. U.S., 869 F.2d 829 (5th Cir. 1989).

Screening (OLS) and Billed Number Screening (BNS) services from SWBT. SWBT would be responsible for all charges associated with the "failure" of the OLS and BNS services.[16]

Assume that (1) an interLATA toll call is made in SWBT territory from a private payphone and billed to a third number; (2) the payphone owner purchases OLS and BNS services from SWBT; (3) the BNS service correctly shows that the call may be billed to the third number; (4) SWBT delivers the call to the IXC, which transports the communication across LATA boundaries, then delivers the call back to SWBT for termination; and (5) the party to whom the IXC bill is sent refuses to pay for the call, correctly claiming that he did not authorize the charge. Under the Florida regulations, the private payphone owner has no responsibility for the unpaid charge. Under common law principles, neither does the party to whom the IXC bill is sent. The "Florida Rule" would place responsibility for the loss upon SWBT, even though SWBT's OLS and BNS services gave a proper and correct response. Thus, SWBT would be held liable, even though its conduct was neither the cause-in-fact nor proximate cause of the loss.

SWBT's BNS service correctly showed that the call could be billed to the third number. The BNS service will show that a call cannot be billed to a line only if the customer has restricted that line to <u>all</u> third-number calls. SWBT's conduct thus was not a "substantial factor" in the loss, nor would the loss have occurred "but for" SWBT's conduct (because SWBT had no option).

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[16] Florida Administrative Code, rules 25-4.076, 25-24.475, and 25-24.515.

Even if one assumes that SWBT's conduct was a cause-in-fact of the hypothetical loss, it is surely not foreseeable that an appropriate BNS response will lead to a loss. If the law were otherwise, as various Comments would have it, then SWBT screening services would be insurance policies.[17]

Another example in which liability would be imposed upon SWBT without causation is discussed in Section II above, the case of a communication charged to a stolen credit card before SWBT receives notice of the theft. In that case, SWBT's LIDB will properly show the card to be valid. Yet MCI states: "At a minimum, LECs should not be permitted to collect the LIDB query and access charges associated with fraudulent calls."[18] AT&T goes even further: "Thus, carriers who launch a LIDB query containing the above information [originating and terminating numbers] should be indemnified by the LEC against loss of their tariffed charges for any fraudulent call described in the query."[19] In this example, as in the last, SWBT's conduct in returning a "valid" response to a LIDB query is neither the cause-in-fact nor the proximate cause of

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[17] The Commission should note that the Florida PSC rule has not reduced the amount of toll fraud. GTE's Comments, at page 11, point out that "the FPSC's policy has been effective only in reducing the number of complaints filed by private payphone providers regarding fraud--the amount of fraud has not decreased." Since the whole point of "loss sharing" is to reduce the costs suffered by certain parties, such as private payphone providers, while relieving them of the need to take any action to reduce fraud, it is little wonder that their complaints have decreased.

[18] Comments of MCI, p. 14.

[19] Comments of AT&T, p. 34.

the loss. Yet once again the commenting parties would require SWBT to shoulder the liability.

If the Commission adopts ARINC's proposal--that customers should not be held liable for toll fraud during any billing cycle in which they have not received actual notice of fraud occurring[20]--then liability for toll fraud will be placed squarely upon LECs not involved in the chain of causation, unless one assumes, as ARINC apparently wishes the Commission to believe, that LECs control, monitor and anticipate every call placed within their networks. ARINC, a carrier of large educated users (airlines), knows that such is not the case. Various privacy laws, to say nothing of simple democratic principles, prohibit such "police state" monitoring.

Perhaps the most obvious example of circumstances in which SWBT's conduct does not legally "cause" the loss involves CPE/PBX fraud. If a "hacker" improperly draws dial tone from a user's PBX and improperly places toll calls, SWBT has no way of stopping such conduct. Unless the thief is so unsophisticated that he places hundreds of calls over a lengthy period of time, SWBT has no way of even alerting the PBX owner. Yet the International SL-1 Users Association would require SWBT to bear twenty-five percent of all PBX toll fraud liability.[21]

Many devices allow a CPE/PBX owner to control fraud. For example, some systems limit (by area code, by area code and prefix,

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[20] Comments of ARINC, p. 3.

[21] Comments of International Sl-1 Users Association, p. 2.

and by individual number) the locations to which calls can be placed. These systems allow owners to track calling patterns by originating station and remote access, and also to restrict remote access based on authorization numbers. When certain thresholds are met, alarms are given, and questionable calling activity can be stopped. Such systems have been available for at least fifteen years. The CPE/PBX owners, however, are more intent on forcing others to pay for toll fraud than on taking steps to stop the problem.

Liability for toll fraud should be placed only upon the party(ies) who can stop the fraud; i.e., the party(ies) who are in the chain of causation of the loss. One outside the chain of causation, such as SWBT, can do nothing to stop the fraud. The common law places no responsibility upon such a party, and the record herein provides no support for abrogating the common law.

IV. CELLULAR FRAUD

Any number of commenting parties support a theory of "liability sharing" for cellular fraud, but in most cases conclude that the current apportionment of liability is in fact the appropriate "sharing."[22] This is consistent with SBC's position that each carrier should bear the cost only of the portion of fraud

[22] See, e.g., Comments of CTIA, pp. 12-13 (long distance losses from fraudulent calling should and do fall on the IXC in an equal access environment).

occurring on its network.[23] Additional "loss sharing" mechanisms are neither necessary nor appropriate.

AT&T and MCI argue that a cellular carrier and its customers should bear all the cost of toll fraud when the thief obtains access, as through "cloning," on the cellular network.[24] When a thief uses a cloned or stolen ESN (Electronic Serial Number) to place toll calls, both cellular carrier and IXC are defrauded. MCI nonetheless believes that it "clearly" should not bear any loss since the fraud "originated" on the cellular network. MCI alleges that it cannot determine whether a cellular call passed to it is fraudulent. But MCI has the same monitoring and detection capabilities as the cellular carrier. This suggests that, in the absence of a contractual agreement to the contrary, each party should bear the expense of the fraudulent use of its own network.

IXCs such as AT&T and MCI want access to the cellular network to impose toll charges (which in an equal access environment are assessed against the end user and not the cellular

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[23] The National Cellular Resellers Association (NCRA) once again took the opportunity, no matter how inappropriate, to reurge its desire that cellular carriers be required to allow resellers to interconnect with cellular switches. As SBC noted in one of the more recent dockets in which NCRA raised the issue, resellers are not entitled to such interconnection rights. (Reply Comments of SBC, CC Docket 93-292, filed November 23, 1993.) NCRA complains that cellular resellers should not bear the costs of toll fraud, a matter not necessarily within the control of the cellular carrier whose service they resell, and concludes that they should receive interconnection rights. The argument is a non sequitur, and in any event, the NCRA assiduously avoids stating either that resellers are now actually bearing any toll costs from fraud or that they would be willing to bear the expenses of toll fraud if they were allowed to interconnect. NCRA's argument is misplaced and unpersuasive.

[24] Comments of AT&T, p. 31; Comments of MCI, p. 13.

carrier), but they do not want to bear any of the risk. Cellular carriers are working toward eliminating access fraud such as cloning, but they cannot and should not be required to act as guarantors of payment for IXCs desiring to accept calls from cellular customers.

In the case of cellular carriers providing equal access to IXCs, toll fraud losses already fall as they should. Cellular carriers bear the costs of providing cellular service, access charges and billing and collection, costs which give cellular carriers strong incentive to detect and prevent fraud. AT&T is simply mistaken in asserting that cellular carriers bear "only" the cost of providing airtime, whereas AT&T bears the "additional" costs of access charges and billing and collection.[25]

Several parties suggest that cellular carriers could fight fraud by transmitting "II" digits (61, 62 or 63) that identify a cellular call to an IXC. SBMS began transmitting those "II" digits last year to all IXCs willing and able to receive them.

The Commission should encourage the industry effort to combat fraud, but there is nothing to be gained, other than more bureaucracy, from additional rules and regulations.

V. CONCLUSION

In the NPRM and Comments filed herein, almost no mention is made of the party most directly responsible for the toll fraud problem--the thief. The Commission correctly points out that it is

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[25] Comments of AT&T, p. 31.

"not charged with enforcing criminal statues or prosecuting toll fraud perpetrators."[26] Thus, this Docket is, to some degree, an exercise in futility. Stiffer laws with stiffer penalties are surely needed, but that is beyond the Commission's realm.

CPE/PBX users/owners must take much greater care in selecting hardware and controlling usage, but the Commission does not seem inclined to press in this direction. Instead, the NPRM discusses "loss sharing" arrangements under which there would be little, if any, incentive for anyone to prevent toll fraud. Such plans would merely make fraud another cost of doing business, a cost apportioned among all market providers and customers. Because all parties required to bear part of the loss would raise rates proportionately, such "shared loss" costs would be greater by several magnitudes than the costs of simple fraud prevention. Also, toll fraud losses distributed to LECs under a "sharing" mechanism would be legitimate costs of access provision and thus would be recovered from IXCs, some of the very parties wishing to pass such losses to LECs in the first place!

The "loss sharing" scheme envisioned by the NPRM would create a bureaucratic nightmare; some administrative agency (presumably the FCC) would be responsible for identifying the entities involved in any particular transaction. For example, assume that an end user accesses IXC-1 through a Competitive Access Provider (CAP). Then IXC-1 delivers the transmission to LEC-1, which call-forwards the transmission to IXC-2, which delivers the

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[26] NPRM, ¶6.

transmission to LEC-2, which passes the call to an independent telephone company for termination. Assume further that the call is billed to a valid but recently stolen calling card issued by LEC-1. Six different entities have been involved in transmission. When IXC-1 is not paid for the call, which entity does IXC-1 notify? All of them? What if some or all refuse to pay? Obviously, some sort of centralized agency will have to be established to handle such claims. Will affirmative defenses be allowed? What happens if IXC-2 goes out of business before the claim is processed? Would it make any difference if the calling card were validated by LEC-2's LIDB?

SBC is willing to participate in cooperative industry efforts to curb toll fraud. Indeed, SBC affiliates have taken several actions on their own--discussed in SBC's Comments and in this Reply--to combat such fraud, as have other LECs and IXCs. SBC affiliates are not willing, however, to participate in a

bureaucratic rodeo which will increase everyone's costs and do nothing to reduce toll fraud.

Respectfully submitted,

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February 10, 1994

CERTIFICATE OF SERVICE

I, Liz Jensen, hereby certify that the foregoing Reply of Southwestern Bell Telephone Company, in Docket 93-292, has been served this 10th day of February, 1994 to the Parties of Record.

Liz Jensen

Liz Jensen

February 10, 1994